

INTERGOVERNMENTAL PARTNERSHIP AGREEMENT
ePermit System and Services

THIS INTERGOVERNMENTAL PARTNERSHIP AGREEMENT ("Agreement") will become effective when all required signatures have been obtained by and between The State of Oregon, acting by and through the Department of Consumer and Business Services (DCBS), Building Codes Division ("BCD") and Newport ("Jurisdiction"), a political subdivision of the State of Oregon. BCD and the Jurisdiction may collectively be referred to herein as the Parties and individually as the Party. The Parties enter into this Agreement to cooperate and share services pursuant to the authority granted under Oregon Laws 2013 Chapter 528 (SB 582). The purpose of this partnering agreement is to encourage economic development through construction and to use experimentation and innovation for administration of building inspection programs. It is in the best interest of BCD and Newport leaders to ensure that construction-related development activities proceed in a manner as quickly and efficiently as practical. Having a flexible and responsive system requires sufficient staff and resources to be available to construction businesses. By partnering together, BCD and Newport can explore new ways to maximize the use of scarce resources.

DCBS:

Celina Patterson,
ePermitting Manager
1535 Edgewater St NW
PO Box 14470
Salem, OR 97309
(503) 373-0855

Jurisdiction:

Derrick Tokos
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
(541) 574-0626

RECITALS

- A. Oregon Revised Statute ORS 455.095 provides that DCBS shall develop and implement a system that provides electronic access to building permitting information. The statute also requires DCBS to make the system accessible for use by municipalities in carrying out the building inspection programs administered and enforced by the municipalities.
- B. The Department of Administrative Services, State Procurement on behalf DCBS issued a Request for Proposal (RFP) for a statewide ePermit system and associated products and services ("ePermit System"). Accela, Inc. was the successful proposer. On or about August 8, 2008, DCBS and Accela, Inc. entered into a contract ("ePermit contract") by which Accela, Inc. licensed to DCBS ePermitting system software, an IVR system and provided related configuration, implementation and hosting services (collectively the "ePermit System").
- C. The ePermit contract provided that the ePermit System and related Services would be available to municipalities ("Participating Jurisdictions").

- D. BCD is the division of DCBS that implements and administers the ePermitting system.
- E. Jurisdiction has requested that BCD provide access to the ePermitting System and related Services to Jurisdiction and to implement the Jurisdiction as a Participating Jurisdiction as set forth in the ePermitting contract.
- E. BCD is willing, upon the terms of and conditions of this Agreement, to provide access to Jurisdiction to the ePermitting System and related Services and to implement Jurisdiction as provided herein.

1. DEFINITIONS.

- 1.1. As used in this Agreement, the following words and phrases shall have the indicated meanings.
- 1.2. "Agreement" means this Intergovernmental Agreement.
- 1.3. "ePermitting Contract" has the meaning set forth in Recital B and includes all amendments thereto.
- 1.4. "ePermit System" means the entire system including the ePermitting software licensed implemented and configured pursuant to the ePermit contract and related Services including hosting and IVR.
- 1.5. "Jurisdiction" has the meaning set forth in the first paragraph of this Agreement.

2. TERM, RENEWAL AND MODIFICATIONS.

- 2.1. Term. This Agreement is effective, and will be considered fully executed, upon signature by both parties, and shall remain in effect until termination of this Contract as provided herein. Unless otherwise terminated as provided herein, this Contract will be in effect for the period that Jurisdiction administers and enforces a building inspection program. This Agreement will automatically renew in the event that the Jurisdiction's program assumption is renewed for an additional period.
- 2.2. Agreement Modifications. Notwithstanding the foregoing, or, any other provision of the Agreement, BCD may propose a modified Agreement or new intergovernmental agreement for Jurisdiction access to the ePermit System. BCD will propose such modified Agreement or new intergovernmental agreement with at least 60 days written notice prior to expiration of the Jurisdiction's current program assumption period. The new intergovernmental agreement or modified Agreement will be effective on the effective date of the renewal of Jurisdiction's program assumption. If the parties

cannot agree to the new intergovernmental agreement or modified Agreement, this Agreement will terminate effective on the renewal date of Jurisdiction's program assumption. Additionally, during the term of this Agreement, BCD may propose modifications to this Agreement and which will become effective upon mutual agreement by the parties in accord with section 19 of this Agreement.

3. PERFORMANCE AND DELIVERY.

3.1 Responsibilities of BCD.

- 3.1.1. BCD shall use its best efforts to provide Jurisdiction access to the ePermit System and related Services. BCD shall use its best effort to provide the Jurisdiction with satisfactory access on a parity with all other jurisdictions implemented by BCD to the ePermit System.
- 3.1.2. BCD will implement the Jurisdiction using the process according to the ePermitting Implementation Methodology set forth in Exhibit B. In the event that a Work Order Contract is used to implement a specific city or county, a copy of that agreement shall be provided in Exhibit E.
- 3.1.3. Upon implementation, Jurisdiction will have access to the System and the functionality as described in the ePermit contract and determined during the implementation process.
- 3.1.4. BCD will provide technical support for the ePermit program. Support shall be provided to Jurisdiction 8:00 a.m. to 5:00 p.m. Monday through Friday, except for state observed holidays and from 8:30-10:00 am on Mondays when ePermitting staff holds its weekly staff meeting. The general support structure shall be as follows:
 - 3.1.4.1. State ePermitting team provides technical support to participating city or county.
 - 3.1.4.2. Accela provides technical support to State ePermitting team.

In the event that the State team is unable to communicate a solution to the participating city or county, the State team will facilitate communication between Accela and participant.

3.2. Responsibilities of Jurisdiction.

- 3.2.1. Jurisdiction agrees to the requirements of Exhibit A.
- 3.2.2. Jurisdiction agrees to abide by the terms and conditions of the Software License set forth in Exhibit B.

- 3.2.3. Jurisdiction agrees to abide by the implementation model that is identified in Exhibit E.

4. REPRESENTATIONS AND WARRANTIES.

- 4.1 Representations of Jurisdiction. Jurisdiction represents and warrants to BCD as follows:

- 4.1.1. Organization and Authority. Jurisdiction is a political subdivision of the State of Oregon (or an intergovernmental entity formed by political subdivisions of the State of Oregon under ORS Chapter 190) duly organized and validly existing under the laws of the State of Oregon. Jurisdiction has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder. Jurisdiction has assumed and administers a building inspection program under ORS 455.148 to ORS 455.153.
- 4.1.2. Due Authorization. The making and performance by Jurisdiction of this Agreement (1) have been duly authorized by all necessary action of Jurisdiction and (2) do not and will not violate any provision of any applicable law, rule, and regulation.
- 4.1.3. Binding Obligation. This Agreement has been duly executed and delivered by Jurisdiction and constitutes a legal, valid and binding obligation of Jurisdiction, enforceable according to its terms.
- 4.1.4. Jurisdiction has reviewed the ePermit contract and ePermit System and is knowledgeable of the ePermit system functionality and performance and has entered into this agreement based on its evaluation of the ePermit Contract and the ePermit System

- 4.2. Representations and Warranties of BCD. BCD represents and warrants to Jurisdiction as follows:

- 4.2.1. Organization and Authority. BCD is an agency of the state government and BCD has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
- 4.2.2. Due Authorization. The making and performance by BCD of this Agreement (1) have been duly authorized by all necessary action of BCD and (2) do not and will not violate any provision of any applicable law, rule, and regulation.
- 4.2.3. Binding Obligation. This Agreement has been duly executed and delivered by BCD and constitutes a legal, valid and binding obligation of BCD, enforceable according to its terms.
- 4.2.4. Performance Warranty. BCD will use its best efforts to provide

Jurisdiction access to the ePermit System and implement the Jurisdiction according to the ePermit contract and Exhibit B. Notwithstanding the foregoing, Jurisdiction understands and agrees that the ePermit System is composed of software and services provided by third parties and BCD has no responsibility to Jurisdiction for the functionality or performance of the ePermit System.

- 4.3. The warranties set forth above are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

5. ACCESS TO RECORDS AND FACILITIES.

- 5.1. Records Access. BCD, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of the Jurisdiction that are directly related to this Agreement, for the purpose of making audits, examinations, excerpts, copies and transcriptions.
- 5.2. Retention of Records. Jurisdiction shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the termination of this Agreement.
- 5.3. Public Records. Jurisdiction shall be deemed the Custodian for the purposes of public records requests regarding requests related to Jurisdiction's building inspection program.

6. JURISDICTION DEFAULT. Jurisdiction shall be in default under this Agreement upon the occurrence of any of the following events:

- 6.1. Jurisdiction fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein.
- 6.2. Any representation, warranty or statement made by Jurisdiction herein is untrue in any material respect when made.

7. BCD DEFAULT. BCD shall be in default under this Agreement upon the occurrence of any of the following events:

- 7.1. BCD fails to perform, observe or discharge any of its covenants, agreements, or obligations set forth herein; or
- 7.2. Any representation, warranty or statement made by BCD herein is untrue in any material respect when made.

8. TERMINATION.

- 8.1. Jurisdiction Termination. Jurisdiction may terminate this Agreement in its entirety as follows:

- 8.1.1. For its convenience, upon at least six calendar months advance written notice to BCD, with the termination effective as of the first day of the month following the notice period;
- 8.1.2. Upon 30 days advance written notice to BCD, if BCD is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as Jurisdiction may specify in the notice; or
- 8.1.3. Immediately upon written notice to BCD, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that Jurisdiction no longer has the authority to meet its obligations under this Agreement.

9. DCBS, BCD TERMINATION. BCD may terminate this Agreement as follows:

- 9.1. For its convenience, upon at least twenty-four calendar months advance written notice to Jurisdiction, with the termination effective as of the first day of the month following the notice period.
- 9.2. Upon termination of the ePermit Contract with such reasonable notice to Jurisdiction as feasible under the terms of the ePermit Contract.
- 9.3. Immediately upon written notice to Jurisdiction if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that BCD no longer has the authority to meet its obligations under this Agreement.
- 9.4. Upon 30 days advance written notice to Jurisdiction, if Jurisdiction is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as BCD may specify in the notice.
- 9.5. Immediately, in the event that Jurisdiction no longer administers and enforces a building inspection program.

10. EFFECT OF TERMINATION.

- 10.1. No Further Obligation. Upon termination of this Agreement in its entirety, BCD shall have no further obligation to provide access to the ePermit System and related Services to Jurisdiction.
- 10.2. Survival. Termination or modification of this Agreement pursuant to sections 8 and 9 above, shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination, Jurisdiction shall immediately cease all activities under this Agreement, unless expressly directed otherwise by BCD in the notice of termination.

10.3. Minimize Disruptions. If a termination right set forth in section 8 or 9 is exercised, both parties shall make reasonable good faith efforts to minimize unnecessary disruption or other problems associated with the termination.

10.4. Jurisdiction Data. Jurisdiction may obtain a copy of data related to its building inspection program.

- 11. NOTICE.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to Jurisdiction or BCD at the addresses or numbers set forth on page one of this agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed shall be effective five (5) days after mailing. Any communication or notice delivered by facsimile shall be effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against BCD, any notice transmitted by facsimile must be confirmed by telephone notice to BCD's ePermitting Manager. To be effective against Jurisdiction, any notice transmitted by facsimile must be confirmed by telephone notice to Jurisdiction's City Manager or County Administrative Officer. Any communication or notice given by personal delivery shall be effective when actually delivered.
- 12. SEVERABILITY.** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 13. COUNTERPARTS.** This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- 14. GOVERNING LAW, CONSENT TO JURISDICTION.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between BCD (and/or any other agency or department of the State of Oregon) and Jurisdiction that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court in the State of Oregon of proper jurisdiction. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. JURISDICTION, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

15. **COMPLIANCE WITH LAW.** The parties shall comply with all state and local laws, regulations, executive orders and ordinances applicable to the Agreement. All employers, including BCD and Jurisdiction, that employ subject workers who provide Services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126.
16. **ASSIGNMENT OF AGREEMENT, SUCCESSORS IN INTEREST.** The parties agree there will be no assignment or delegation of the Agreement, or of any interest in this Agreement, unless both parties agree in writing. The parties agree that no services required under this Agreement may be performed under subcontract unless both parties agree in writing. The provisions of this Agreement shall be binding upon and shall inure to the parties hereto, and their respective successors and permitted assignees.
17. **NO THIRD PARTY BENEFICIARIES.** BCD and Jurisdiction are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
18. **WAIVER.** The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by that party of that or any other provision. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
19. **AMENDMENT.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required by the Department of Administrative Services and Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Jurisdiction, by signature of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.
20. **HEADINGS.** The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and shall not be used to construe the meaning or to interpret this Agreement.
21. **CONSTRUCTION.** This Agreement is the product of extensive negotiations between BCD and representatives of Jurisdiction. The provisions of this Agreement are to be interpreted and their legal effects determined as a whole. An arbitrator or court interpreting this Agreement shall give a reasonable, lawful and effective meaning to the Agreement to the extent possible, consistent with the public interest.
22. **INDEPENDENT CONTRACTOR.** The parties agree and acknowledge that their relationship is that of independent contracting parties and that neither party is

an officer, employee, or agent of the other as those terms are used in ORS 30.265 or otherwise.

23. LIMITATION OF LIABILITY.

23.1. Jurisdiction agrees that BCD shall not be subject to any claim, action, or liability ARISING IN ANY MANNER WHATSOEVER OUT OF ANY ACT OR OMISSION, INTERRUPTION, OR CESSATION OF ACCESS OR SERVICE UNDER THIS AGREEMENT. THE STATE SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DIRECT, INDIRECT SPECIAL OR CONSEQUENTIAL DAMAGES SUSTAINED BY THE POLITICAL SUBDIVISION, INCLUDING, BUT NOT LIMITED TO, DELAY, INTERRUPTION OF BUSINESS ACTIVITIES, OR LOST RECEIPTS THAT MAY RESULT IN ANY MANNER WHATSOEVER FROM ANY ACT OR OMISSION, INTERRUPTION, OR CESSATION OF SERVICE.

23.2. EXCEPT FOR LIABILITY ARISING UNDER SECTION 26 NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

24. FORCE MAJEURE. Neither BCD nor Jurisdiction shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of BCD or Jurisdiction, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

25. TIME IS OF THE ESSENCE. Time is of the essence in the performance of all under this Agreement.

26. CONTRIBUTION

26.1. If any third party makes any claim or brings any action, suit or proceeding ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

26.2. With respect to a Third Party Claim for which BCD is jointly liable with the Jurisdiction (or would be if joined in the Third Party Claim), BCD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Jurisdiction in such proportion as is appropriate to reflect the relative fault of BCD on the one hand and of the Jurisdiction on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of BCD on the one hand and of the Jurisdiction on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. BCD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if BCD had sole liability in the proceeding.

26.3. With respect to a Third Party Claim for which the Jurisdiction is jointly liable with BCD (or would be if joined in the Third Party Claim), the Jurisdiction shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by BCD in such proportion as is appropriate to reflect the relative fault of the Jurisdiction on the one hand and of BCD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Jurisdiction on the one hand and of BCD on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Jurisdiction's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

27. AGREEMENT DOCUMENTS IN ORDER OF PRECEDENCE. This Agreement consists of the following documents that are listed in descending order of precedence:

- This Agreement less all exhibits;
- Exhibit A - Jurisdiction Obligations
- Exhibit B - ePermit License Agreement
- Exhibit C - ePermit Contract (not attached, but made available to Jurisdiction)
- Exhibit D - (Work Order, if applicable)
- Exhibit E – Implementation Model


All attached and referenced exhibits are hereby incorporated by reference.

28. MERGER CLAUSE. This Agreement and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There

are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind all parties unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of BCD to enforce any provision of this Agreement shall not constitute a waiver by BCD of that or any other provision.

**JURISDICTION, BY EXECUTION OF THIS AGREEMENT, HEREBY
ACKNOWLEDGES THAT JURISDICTION HAS READ THIS CONTRACT,
UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND
CONDITIONS.**

A. Jurisdiction

By:  Date: 03-31-15

Printed Name: Spencer Nebel

Title: City Manager

By:  Date: 4/6/15

Printed Name: Chris Huntington

Title: Deputy Administrator

By: _____ Date: _____

Printed Name: _____

Title: _____

**B. State of Oregon, Acting by and through its Department of Consumer and
Business Services, Building Codes Division**

By: _____ Date: _____

Printed Name: _____

Title: _____

**C. State of Oregon, acting by and through its Department of Consumer and Business
Services, Building Codes Division**

By:  Date: 4/19/15

Printed Name: Celina Patterson

Title: Permitting Manager

Exhibit A

Jurisdiction Obligations

Jurisdiction Software

As part of the state hosted system, any software being used by Jurisdiction to support either the building permitting system or any supplemental products being purchased from Accela, must be compatible with the Accela product.

Product Features

Jurisdiction agrees to sell permits online through the ePermitting Portal. Jurisdiction agrees to offer online and IVR inspection scheduling for permits in an appropriate status. Jurisdiction agrees to offer online submittal of plan documents at appropriate point(s) in the application process as dictated by the Jurisdiction's workflow associated with each record type.

Permit Numbering Scheme.

As a full service participant, Jurisdiction agrees to include the pre-assigned three digit prefix to all permits covered by and processed through ePermitting system. Permits for any supplemental products purchased through Accela, hosted in the State of Oregon environment and being serviced through the State of Oregon ePortal must also use the three-digit prefix in the permit number. Permits for supplemental products purchased through Accela that will not be hosted or maintained on the Oregon platform and that are not serviced through the State of Oregon ePortal are not required to use the three-digit prefix.

Status and Result Codes.

All status and result codes such as inspections, plan review, permit issuance status will be pursuant to a statewide uniform system. Jurisdiction shall only use the uniform status and result codes.

Inspection Codes.

Inspection types for code required inspections must be consistent throughout the state. Unique inspection types must be requested through and assigned by the ePermitting staff.

Supplemental Products Purchased by Jurisdiction through Accela.

Any supplemental product such as, but not limited to, Land Use, Enforcement, Licensing or other services, are licensed directly to Jurisdiction by Accela. Support services for the supplemental products fall outside of the scope of this Intergovernmental Agreement and are therefore provided through direct agreement with Accela or other service provider. Installation of supplemental products onto the State hosted servers cannot occur before the State ePermitting team begins active development of the building permitting module.

Version (Product) updates.

Migration from one product version of Accela Automation to another product version will be regulated and coordinated through BCD. Supplemental products will be required to migrate to the same version of the product at the same time as the product version for the building product module. After implementation, Jurisdiction is required to test the configuration against new versions of the product in the timeframe specified by BCD.

Exhibit B
Software License Agreement

Note: DCBS through the ePermit Contract has the right to permit Jurisdictions to use the ePermit System software as set forth in Exhibit G, License Agreement, of the ePermit Contract. While the entire software license agreement between the State and Accela, Inc., including the added language in Amendment 7, has been provided here for continuity and ease of use, a participating city or county is only bound by Sections 3.1, 3.2, and 4 as specified in this Agreement.

1. Parties ACCELA	CUSTOMER
Accela, Inc.	State of Oregon
	Department of Consumer & Business
2633 Camino Ramon, Suite	Services P.O. Box 14470
120 Bishop Ranch 3	
San Ramon, California	Salem, OR 97309
94583 Attention: Contracts	Attention: Building Codes
Administration T: 925.659.3200	Division T: (503)378-4100 F:
F: 925.407.2722	(503)378-3989
e-Mail: contractsadmin@accela.com	e-Mail: chris.s.huntington@state.or.us

This License Agreement ("LA") is intended for the exclusive benefit of the Parties; except as expressly stated herein, nothing will be construed to create any benefits, rights, or responsibilities in any other parties.

2. Term and Termination

- 2.1 Term Provided that Customer signs and returns this LA to Accela **no later than August 8, 2008**, this LA is effective as of the date of Customers signature ("Effective Date") and will continue until terminated as provided herein.
- 2.2 Termination Either party may terminate if the other party materially breaches this LA and, after receiving a written notice describing the circumstances of the default, fails to correct the breach within thirty (30) calendar days. Upon any termination or expiration of this LA, all rights granted to Customer are cancelled and revert to Accela.

3 Intellectual Property

- 3.1 License The software products ("Software") listed in Exhibit A are protected under the laws of the United States and the individual states and by international treaty provisions. Accela retains full ownership in the Software and grants to Customer a perpetual, limited, nonexclusive, nontransferable license to use the Software, subject to the following terms and conditions:
 - 3.1.1 The Software is provided for use only by Customer employees. For the purposes of subsections 3.1, 3.2 and Sections 4 of this LA, Customer means: i) the

individual Jurisdiction with respect to its use of the Software, provided that the licensing fee has been paid for such Jurisdiction, and ii) the State of Oregon acting by and through its Department of Consumer and Business Services with respect to its use of the Software.

- 3.1.2 The Software may be installed on one or more computers but may not be used by more than the number of users for which the Customer has named user licenses. For the purposes of this License Agreement, the Customer has unlimited use, per department, of any license covered by this agreement. The Software is deemed to be in use when it is loaded into memory in a computer, regardless of whether a user is actively working with the Software. Accela may audit Customer's use of the Software to ensure that Customer has paid for an appropriate number of licenses. Should the results of any such audit indicate that Customer's use of the Software exceeds its licensed allowance, Customer agrees to pay all costs of its overuse as determined using Accela's then-current pricing; any such assessed costs will be due and payable by Customer upon assessment. Customer agrees that Accela's assessment of overuse costs pursuant to this Subsection is not a waiver by Accela of any other remedies available to Accela in law and equity for Customer's unlicensed use of the Software.
- 3.1.3 Customer may make backup copies of the Software only to protect against destruction of the Software. With exception of the Entity Relationship Diagram and any other documentation reasonably-designated and specifically-marked by Accela as trade secret information not for distribution, Customer may copy Accela's documentation for use by those persons described in section 3.1.1, supra, provided that such use is for business purposes not inconsistent with the terms and conditions of this Licensing Agreement. "Trade Secret" has the meaning set forth in ORS 192.501(2)
- 3.1.4 Customer may not make any form of derivative work from the Software, although Customer is permitted to develop additional or alternative functionality for the Software using tools and/or techniques licensed to Customer by Accela.
- 3.1.5 Customer may not obscure, alter, or remove any confidentiality or proprietary rights notices.
- 3.1.6 Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (**ORS 30.260 through 30.300**), Customer is liable to Accela for any direct damages incurred as the result of unauthorized reproduction or distribution of the Software which occur while the Software is in Customer's possession or control.
- 3.1.7 Customer may use the Software only to process transactions relating to properties within both its own geographical and political boundaries and in counties contiguous to Oregon with populations below 100,000. Customer may not sell, rent, assign, sublicense, lend, or share any of its rights under this LA.

3.1.8 Customer is entitled to receive the Software compiled (object) code and is licensed to use any data code produced through implementation and/or normal operation of the Software; Customer is not entitled to receive source code for the Software except pursuant to an Intellectual Property Escrow Agreement, which may be executed separately by the Parties. Accela and Customer will execute an Intellectual Property Escrow Agreement within 30 days of Contract execution.

3.1.9 All rights not expressly granted to Customer are retained by Accela.

3.1.10 Customers are allowed unlimited use, per department, of software products listed in Exhibit A, for in-scope record type categories defined in Attachment 1 to this LA. In addition, each customer is allowed five (5) additional record types for activities that fall outside of the in-scope record type categories defined in Attachment 1 to this L.A., are delivered under the Building Department and are submitted to and approved by DCBS.

3.2 License Warranties

3.2.1 Accela warrants that it has full power and authority to grant this license and that, as of the effective date of this LA, the Software does not infringe on any existing intellectual property rights of any third party. If a third party claims that the Software does infringe, Accela may, at its sole option, secure for Customer the right to continue using the Software or modify the Software so that it does not infringe. Accela expressly agrees to defend, indemnify, and hold Customer harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys fees, and damages arising out of or related to any claims that the Software, or the Customers use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that Customer shall provide Accela with prompt written notice of any infringement claim. Accela will have the sole right to conduct the defense of any legal action and all negotiations for its settlement or compromise; provided, however, Accela shall not settle any claim against the Customer with the consent of Customer.

3.2.2 Accela has no obligation for any claim based upon a modified version of the Software or the combination or operation of the Software with any product, data, or apparatus not provided by Accela, with the exception of those products identified in Exhibit J. Accela provides no warranty whatsoever for any third-party hardware or software products.

3.2.3 Except as expressly set forth herein, Accela disclaims any and all express and implied warranties, including but not necessarily limited to warranties of merchantability and fitness for a particular purpose.

3.3 Compensation

3.3.1 License Fees In exchange for the Software described hereinabove, Customer will pay to Accela the amounts indicated in Exhibit A3.

3.3.2 Payment Terms Amounts are quoted in United States dollars and do not include applicable taxes, if any. The payment terms of all invoices are net forty-five (45) calendar days from the dates of the invoices. Any payment not paid to Accela within said period will incur a late payment in an amount equal to two-thirds of one percent (.66%) per month (eight percent (8% per annum), on the outstanding balance from the billing date. Accela may, at its sole discretion, suspend its obligations hereunder without penalty until payments for all past-due billings have been paid in full by Customer. All payments to Contractor are subject to ORS 293.462

4. Confidentiality

4.1 Confidentiality and Nondisclosure. Each party acknowledges that it and its employees or agents may, in the course of performing its responsibilities under this LA, be exposed to or acquire information that is confidential to the other party or the other party's clients. Any and all information clearly marked confidential, or identified as confidential in a separate writing as confidential provided by one party or its employees or agents in the performance of this LA shall be deemed to be confidential information of the other party ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by the recipient of such information shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the party acquiring such information) publicly known or is contained in a publicly available document; (b) is furnished by the party disclosing such information to others without restrictions similar to those imposed by this LA; (c) is rightfully in the receiving party's possession without the obligation of nondisclosure prior to the time of its disclosure under this LA; (d) is obtained from a source other than the discloser without the obligation of confidentiality, (e) is disclosed with the written consent of the disclosing party, or; (f) is independently developed by employees or agents of the receiving party who can be shown to have had no access to the Confidential Information.

4.2 The recipient of Confidential Information agrees to hold Confidential Information in strict confidence, using at least the same degree of care that it uses in maintaining the confidentiality of its own Confidential Information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than as contemplated by this LA or reasonably related thereto, including without limitation the use by Customer of Accela who need to access or use the System for any valid business purpose, and to advise each of its employees and Accela of their obligations to keep Confidential Information confidential.

- 4.3 Each party shall use commercially reasonable efforts to assist the other in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other immediately in the event it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this LA and each party will at its expense cooperate with the other in seeking injunctive or other equitable relief in the name of the other against any such person.
- 4.4 Each party agrees that, except as provided in this LA or directed by the other, it will not at any time during or after the term of this LA disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this LA each party will turn over to the other all documents, papers and other matter in its possession which embody Confidential Information.
- 4.5 Each party acknowledges that breach of this Article VIII, including disclosure of any Confidential Information will give rise to irreparable injury which is inadequately compensable in damages. Accordingly, each party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Each party acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the other and are reasonable in scope and content.
- 4.6 Customers obligations under this Article VIII shall be subject to the Oregon Public Records Laws, ORS 192.410 through ORS 192.505.

Exhibit C
ePermitting Contract

The epermitting contract is available, upon request, for the Jurisdiction to review.

Exhibit D
Work Order Contract

Under the terms and conditions of the ePermit System Agreement, BCD has the ability to enter into a Work Order Contract for implementation services. Should implementation services be used for the implementation of a specific participating city or county, the provisions of that agreement will be provided here.

A Work Order Contract is not being used to implement this jurisdiction.

Exhibit E

IMPLEMENTATION

OREGON STANDARD MODEL

Oregon Standard Model (OSM), version 2 includes:

- Standard Model Permits (records)
 - Exemption Tracking Record
 - Commercial Alarm Suppression Systems
 - Commercial & Residential Deferred Submittal
 - Commercial & Residential Demolition
 - Commercial & Residential Electrical
 - Commercial & Residential Investigation
 - Commercial & Residential Mechanical
 - Commercial & Residential Phased
 - Commercial & Residential Plumbing
 - Commercial RV Park or Manufactured Home Park
 - Commercial & Residential Septic – DEQ
 - Commercial & Residential Site Development
 - Commercial & Residential Structural
 - Commercial & Residential Research
 - Driveway (if used counts as 1 out of scope)
 - Inquiry
 - Post Disaster
 - Residential 1 & 2 Family Dwelling
 - Residential Manufactured Dwelling
- Standard Model Reports
 - Application About to Expire (List and Letters to Applicant and Owner)
 - Permit About to Expire ((List and Letters to Applicant and Owner)
 - Usage
 - Configuration Reports

- Fee by Account (Summary & Detail)
- Invoice
- Out of Balance
- Payments Applied
- Payments not Applied
- Refunds Issued
- Payments Received
- Payments Summary
- School Construction Excise Tax
- Inspection Correction Notice
- Inspection Summary
- Inspections Assigned
- Recent Inspection Activity
- Monthly Permit Summary
- Monthly Permits Issued
- Monthly Permits Issued Valuation Report
- State Surcharge
- State Surcharge Details
- Balance Due
- Building Application
- Building Permit
- Certificate of Occupancy
- Fee Estimate
- Fee by Record
- Phased Authorization to Begin Work
- Plan Review Checklist
- Temporary Certificate of Occupancy
- Work Authorization
- Receipt

Use of “Consistent Form and Fee Methodology”

Use of Elavon “Virtual Merchant” payment processor with US Bank for internet credit card processing in Accela Citizen Access (ACA)

Oregon Standard Model Implementation includes:

- Several “out of scope” (non-building department) permits: options include tracking record for Planning fees and applications, and business licensing.
- Importing jurisdiction’s fee schedule into Accela
- Data conversion
- Address, Parcel, Owner Database Load
 - ePermitting will provide documentation about how data is to be formatted
 - Jurisdiction will provide files containing Address, Parcel, Owner reference data for loading into ePermitting database
- Interfaces to Jurisdiction Systems (optional)
 - Financial
 - ePermitting will provide files with specified fields for interfaces to jurisdiction’s on site systems
 - Jurisdiction will upload the files into their on site system
 - GIS

- ESRI ArcGIS Server 10 or ESRI ArcGIS Server 10 sp 1
 - Future versions of Accela Software may require upgrades to ESRI software to maintain interface operability
- Training
 - ePermitting provides online training through its ePermitting Web site, several Live trainings will also be arranged through Go To Meeting.
 - Jurisdiction's "super users" will train other jurisdictional employees
- Administrative Responsibilities
 - State may provide limited training on administrative system administrative tools, allowing Jurisdiction to manage its users, fees, inspection calendars and email alerts; Jurisdiction may also write reports that can be run against the data warehouse.
 - ePermitting reserves the right to turn off administrative tools and rights if Jurisdiction's use of the tools is causing problems to the system or if Jurisdiction does not have a trained system administrator.
- Coordination with Accela
 - If Jurisdiction purchases other modules, such as Planning or Code Enforcement, from Accela and has them implemented by Accela, an independent contractor or by Jurisdiction staff, Jurisdiction must coordinate that implementation with ePermitting.
 - Coordination with ePermitting means including ePermitting staff in project management meetings with Jurisdiction and the party implementing the other modules.
- Third Party Jurisdictions
 - If Jurisdiction uses a third party building official and/or inspection agency, Jurisdiction shall run the third party report provided with OSM and submit it with their program assumption Plans. ORS 455.148 (4).